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FCC PROCEEDING 02-278
TELEMARKETING PREEMPTION PETITION

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The Industry Council for Tangible Assets (ICTA) is the national trade association for precious metals, rare coin, and currency dealers. Approximately 85% of ICTA's members are small businesses, operating shops that employ fewer than 5 employees. We appreciate the opportunity to **support** the JOINT PETITION FOR DECLARATORY RULING THAT THE FCC HAS EXCLUSIVE REGULATORY JURISDICTION OVER INTERSTATE TELEMARKETING.

ICTA members must have a national DNC list for interstate calls that supersedes individual states' lists. ICTA strongly agrees with those who argue that attempting to comply with many individual states' interstate DNC lists is not only burdensome and expensive, but a virtual mine field of potential liability. The lack of uniformity of definitions (For example: What constitutes a previous business relationship/existing customer?) can be confusing and can easily lead to unintentional violations.

It has long been recognized that because of the uniqueness of rare coin and currency products, buying and selling is a nation-wide activity. A collector or investor who needs a certain coin for his or her collection or portfolio can only purchase it from someone who owns that particular item. Many customers have "want lists" on file with their favorite dealers. Those firms who market their products via a telemarketing program of outbound phone calls must have a national DNC list.

ICTA was one of the organizations asked to participate in the FTC's Chicago Conference of 1995, where the Telephone Sales Rule (TSR) was drafted. Participants in that conference consistently supported the FTC's attempts to achieve the federal policy goal of carefully balanced uniform national standards for interstate telemarketing with which business could reasonably comply. Both the telemarketing/retail industry and government regulators recognized that, to protect consumers by achieving maximum compliance, the regulations must be fair, clear, consistent, and not burdensome to small business. The current patchwork of divergent state regulations of interstate telemarketing flies in the face of this goal.

The states have ignored the Commission and subject telemarketers to more and more conflicting and confusing state laws; and state legislative proposals for additional restrictions clearly reflect a trend toward greater inconsistency rather than greater harmony.

It was our understanding that the purpose of the 1995 FTC TSR was to *avoid* exactly what has occurred; that is, the purpose of The Rule was to create a *uniform* Rule for interstate telemarketing that would protect consumers by providing businesses with “one stop” compliance. Currently, however, it appears that the states have the ability to enforce their individual interstate telemarketing laws even when a business is in compliance with the federal law.

To summarize, we reiterate that ICTA concurs with the PETITION because States have no authority to regulate interstate telemarketing activities. The FCC *does* have this jurisdiction. ICTA and its members, who are small businesspeople, must have one source for compliance information and direction.

We appreciate this opportunity to comment. Please contact me if you have questions or if ICTA can provide additional information.

Sincerely,

Eloise A. Ullman
Executive Director